



INDIANA COURT OF APPEALS
ORAL ARGUMENT AT A GLANCE
INDIANA STATE UNIVERSITY

CRIMINAL / JUVENILE LAW

May a school police officer constitutionally remove a student from class to question him or her regarding information the officer has received indicating that the student has violated the law?

*T.S. v.
State of
Indiana*

Appeal from:
Marion Superior
Court, Juvenile
Division

The Honorable
Geoffrey
Gaither,
Magistrate

**Oral
Argument:**
February 22,
2006
11:00 a.m. –
11:40 a.m.
20 minutes
each side

CASE SYNOPSIS

**Facts and Procedural
History**

In October 2005, an Indiana Public Schools Police officer received an anonymous phone call indicating that T.S., a student in the officer's high school, had marijuana in his right front pants pocket. The officer did not know who the caller was and the caller did not state how she knew T.S. had marijuana in his possession.

After receiving this call, the officer went to T.S.'s gym class, and told him to accompany the officer to the locker room. After reaching the locker room, the officer told T.S. to change out of his gym uniform into his street clothes. After T.S. had finished dressing, the officer asked T.S. if he had anything on him that he shouldn't have. T.S. then pulled a small plastic baggie containing marijuana out of his front pocket and handed it to the officer.

T.S. filed a **motion to suppress** the evidence obtained dur-

ing the encounter with the officer, and at his **delinquency hearing**, entered objections at all relevant times to the introduction of physical and testimonial evidence regarding the encounter. Following the hearing, the trial court entered a **true finding** as to T.S.'s delinquency.

Parties' Arguments

On appeal, T.S. argues that the evidence introduced against him at his delinquency hearing should have been excluded because it was obtained in violation of T.S.'s rights under the **Fourth Amendment** to the United States Constitution and **Article I, Section 11** of the Indiana Constitution. In order to decide whether T.S.'s rights were violated under the Fourth Amendment, this court will address three principle issues: (1) whether the encounter between the officer and T.S. constituted a **seizure**; (2) the level of cause required for a school police officer to initiate an encounter with a student without the involvement of other school officials; and (3) the standard for determining the constitutionality of a seizure occurring in a school.

*T.S. v. State of Indiana***Case Synopsis (continued)**

If the officer never seized T.S., then the Fourth Amendment was never implicated, and T.S.'s rights were not violated. The State will argue that because students' movements are already restrained while in school, the additional restraint caused by an officer removing a student from class should not be considered a seizure. T.S. argues that he was seized because he did not feel free to refuse the officer's demands, and that the encounter basically constituted a ***Terry stop***.

The Indiana Supreme Court has held the normal Fourth Amendment protections afforded to citizens do not apply to searches conducted in schools by police officers working in conjunction with school officials. No Indiana court has determined what standard should be used for seizures conducted on school property. T.S. argues that because the officer in this case worked alone without involving other school officials, normal Fourth Amendment protections apply. The State argues that the officer is a school official and that a lower standard applies. If normal Fourth Amendment protections apply, then the officer must have had reasonable, articulable suspicion to seize T.S.

In the public setting, the United States Supreme Court has held that an anonymous tip, without more, generally does not give police officers the reasonable suspicion required to conduct a *Terry stop*. The State will argue that this rule does not apply in the school setting, and that an anonymous tip gives a school police officer the au-

thority to seize a student and investigate the tip. T.S. argues that the general rule regarding *Terry stops* should apply, and that this anonymous tip did not give the officer reasonable suspicion.

Finally, even if T.S.'s rights were violated, the evidence will not be suppressed unless it was "fruit of the poisonous tree." That is, in order for suppression to be necessary, the evidence must have been either directly obtained or derivatively gained as a result of information learned during the unlawful seizure.

In order to decide whether T.S.'s rights were violated under the Indiana Constitution, the court must decide if, under the totality of the circumstances, the officer's conduct was reasonable.

*Please see page 3 for a
Glossary of Terms.*

Case Synopsis (*continued*)

GLOSSARY

Indiana Constitution, Article I,

Section 11—Although virtually identical to the Fourth Amendment to the U. S. Constitution, Indiana courts interpret this provision to provide protections in addition to those of the Fourth Amendment. For example, the Indiana Constitution affords greater protections from police trash and car searches than does the Fourth Amendment.

Delinquency hearing—Juveniles are not “convicted” of crimes, but are “adjudicated” to be delinquents. The proceedings are somewhat more relaxed than an adult trial, but the State still must demonstrate beyond a reasonable doubt that the juvenile committed the act. A major distinction is that juvenile adjudications are generally not public record.

U.S. Constitution, Fourth Amendment—Protects “The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures”

Seizure—A seizure occurs when an officer’s conduct would have communicated to a reasonable person that the person was not free to decline the officer’s requests or otherwise terminate the encounter.

Motion to suppress—A request made by the defendant that the court not allow the State to use certain evidence against the defendant at trial, usually based on the allegation that the State obtained the evidence through an illegal or unconstitutional procedure. If the trial court grants the motion, the evidence cannot be used against the defendant. In drug possession cases, if a motion to suppress is successful, the State generally has no case against the defendant and drops the charges.

Terry stop—A brief, investigatory seizure, for which an officer must have reasonable suspicion. The officer is entitled to ask questions and conduct a pat-down search to check for weapons. Depending on the officer’s conduct, a *Terry* stop may elevate into a formal arrest, for which probable cause is required. The term comes from the 1968 U.S. Supreme Court case that articulated the rules for these brief encounters, *Terry v. Ohio*.

True Finding—The juvenile court’s counterpart to a judgment of guilty.

Opinion in this case expected:

By the late spring 2007

The Court will notify Professor Maule when the opinion is handed down. Please check the Court’s website to read the opinion.

Court of Appeals opinions are available online at <http://www.in.gov/judiciary/opinions/appeals.html>.

Locate archived opinions at <http://www.in.gov/judiciary/opinions/archapp.html>

For more information, please visit the Indiana Court of Appeals website at <http://www.in.gov/judiciary/appeals/>

Or contact:

Maura Pierce
Community Liaison
Indiana Court of Appeals
115 W. Washington Street
Suite 1270 South
Indianapolis, IN 46204
(317) 234-4859
E-mail: mpierce@courts.state.in.us

TODAY'S PANEL OF JUDGES

Hon. John G. Baker (Monroe County)

- Judge of the Court of Appeals since June 1989

John G. Baker is originally from Aurora in Dearborn County and now resides in Boone County. Previously he lived in Monroe County for 35 years. For the past 17 years, he has served as a Judge of the Indiana Court of Appeals representing the First District and has authored more than 3,000 majority opinions. Prior to becoming an appellate court judge, he served as county court and superior court judge for 13½ years in Bloomington, disposing of more than 15,000 cases.

Judge Baker received his A.B. degree from Indiana University in 1968 in History and his J.D. from the Indiana University School of Law — Bloomington in 1971. He received his LLM in Judicial Process from the University of Virginia in 1995. Before assuming the trial bench, he was a partner in the firm of Baker, Barnhart and Andrews in Bloomington and was a Captain in the U.S. Army Reserves.

For 27 years Judge Baker has taught as an adjunct professor at Indiana University's School of Public and Environmental Affairs and for three years the School of Law in Bloomington. In addition, Judge Baker has served on the faculties of the Indiana Judicial College, Indiana Continuing Legal Education Forum, and the National Institute of Trial Advocacy.

His professional associations include the American, Indiana State, Monroe County and Indianapolis Bar Associations. For the latter, he served as Vice-President in 1995. He has been a member of the Indiana Judges Association's Board of Managers continually since 1979 and served as its President from January of 1987 through June of 1989. Judge Baker has been active in community and civic affairs as well. In addition to his church, YMCA, and other similar organizations, the Judge has been active in Boy Scouts of America since his youth.

Judge Baker, who was retained on the Court by election in 1992 and 2002, lives near Zionsville with his wife, Margaret (Peggy) Paul Baker. He has three adult sons.

The Court of Appeals hears oral argument at venues across the state to enable Hoosiers to learn about the judicial branch.

This initiative began just prior to the Court's centennial in 2001.

Today's oral argument is the 176th case the Court of Appeals has heard "on the road" since early 2000.

Among the sites for traveling oral arguments are law schools, colleges, high schools, and county courthouses.

TODAY'S PANEL OF JUDGES

Hon. Carr L. Darden (Marion County)

- Judge of the Court of Appeals since October 1994

Carr L. Darden was named to the Indiana Court of Appeals by Governor Evan Bayh in October 1994. Prior to his appointment, he served as a presiding judge in the Marion County Superior Court and the Marion County Municipal Court systems. He also served as the Chief Deputy State Public Defender.

Judge Darden received his BS degree from Indiana University School of Business in 1966 and his JD degree from Indiana University School of Law in Indianapolis in 1970. He is also a 1998 graduate of the Judicial College of Indiana and, in 2004, the Indiana Graduate Program for Judges.

He is a native of Nashville, Tennessee but has lived in Indiana most of his life; therefore, he is a proud Hoosier by choice. He and his wife, Lundy Marie, recently celebrated their 50th wedding anniversary.

Judge Darden considered it an honor to serve in the United States military and received an honorable discharge from the U.S. Air Force in 1959.

In November 2004, Judge Darden received the Paul H. Buchanan, Jr. Award of Excellence by the Indianapolis Bar Foundation, and in May 2006, the Distinguished Alumni Award at the annual IU Law Alumni Association reception. He is also the recipient of two Sagamores of the Wabash, Indiana's highest distinguished citizen award.

Judge Darden is deeply involved in his church and community, serving on the boards of numerous charitable organizations. He has participated in several legal and education seminars. He is a lifetime member of the NAACP, the National Bar Association, and the American, Indiana State, and Marion County bar associations. One of the awards that he cherishes most is the recognition by his peers of being "Exceptionally Qualified" to serve as a trial court judge.

The 15 members of the Indiana Court of Appeals issue some 2,500 written opinions each year.

The Court of Appeals hears cases only in three-judge panels. Panels rotate three times per year. Cases are randomly assigned.

TODAY'S PANEL OF JUDGES

Hon. Margret G. Robb (Tippecanoe County)

- Judge of the Court of Appeals since July 1998

Margret G. Robb was appointed to the Indiana Court of Appeals in July 1998 by Gov. Frank O'Bannon. She holds a B.S. and M.S. in Business Economics from Purdue, and is a 1978 Magna Cum Laude graduate of Indiana University School of Law - Indianapolis. Prior to joining the Court she was engaged in the general practice of law for 20 years in Lafayette and was a Chapter 11, 12 and a Standing Chapter 7 Bankruptcy trustee for the Northern District of Indiana; and the Federal Advisory Committee for the expediting of Federal Litigation. She was a registered family and civil law mediator and served as a Tippecanoe County Deputy Public Defender.

Judge Robb chairs the Supreme Court Task Forces on Family Courts, the development of Trial Court Local Rules, and is involved in several projects to benefit the Indiana legal system. She has also served as a member of the Indiana Board of Law Examiners, the Governance Committee of the Supreme Court IOLTA (Interest On Lawyers' Trust Accounts) Committee; the Federal Advisory Committee on Local Rules for the Federal Court for the Northern District of Indiana; and Federal Advisory Committee for the expediting of Federal Litigation.

Judge Robb has held numerous Board positions for and been an officer for the Indiana State Bar

Association, Indiana Bar Foundation, Tippecanoe County Bar Association, Indianapolis Bar Association, Indianapolis Bar Foundation, American Bar Foundation, National Association of Women Judges, Indiana University School of Law at Indianapolis Alumni Association, and speaks frequently on legal topics for attorneys and other judges.

Judge Robb was Founding Chair of the Governor Otis Bowen's Commission on the Status of Women; was a recipient of the 1993 Indiana State Bar Association's "Celebrating 100 Years of Women in the Legal Profession" award; the 2001 Maynard K. Hine distinguished alumni award, given in recognition of support and service to IUPUI and Indiana University; the 2004 Bernadette Perham "Indiana Women of Achievement" Award, bestowed by Ball State University in honor of one of their outstanding Award, bestowed by Ball State University in honor of one of their outstanding professors; the 2005 Indiana State Bar Association's Women in the Law Recognition Award; and the 2006 Tippecanoe County YMCA Salute to Women "Women of Distinction" Award.

Judge Robb, who was retained on the Court of Appeals by election in 2000, lives in West Lafayette with her husband, a Professor of Communication at Purdue. Their son, Douglas, a graduate of the U.S.N.A., recently embarked on his first deployment.

ATTORNEYS FOR THE PARTIES

For Appellant, T.S.
Elizabeth Gabig
Marion County Public
Defender Agency
Indianapolis

Elizabeth Gabig, an Indianapolis native, began her legal career with the Marion County Public Defender Agency. She worked first as a trial attorney and spent time representing both adult and juvenile clients and now works for the Public Defender

Agency as an appellate attorney.

Ms. Gabig attended Indiana University in Bloomington with a major in Comparative Literature and a focus in Film Studies. She graduated from Bloomington's Indiana University School of Law in 2001.

When she's not practicing law, Ms. Gabig enjoys teaching Kundalini yoga and meditation.

For Appellee, State of Indiana:

Ann Goodwin
Indianapolis

Ann Goodwin graduated from Barnard College in 1991 and received her J.D. in 2000 from the Indiana School of Law-Bloomington.

The mother of one has been with the Attorney General's Office since June of 2006 and is an active member of the Board of Managers for the Harper J. Ransburg YMCA, located on the East side of Indianapolis.

AMICUS BRIEFS

A person who is not a party to a lawsuit may file a brief of amicus curiae, with permission of the Court, if he or she has a strong interest in the subject matter.

- There are no amicus briefs in this case.